IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7213 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

A M C

Versus

AZIZKHAN HAMIDKHAN PATHAN

Appearance:

MR NIKHIL KARIEL for MR BP TANNA for Petitioner

MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 21/09/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. This petition under Article 227 of the Constitution seeks to challenge the award of the Industrial Tribunal, Ahmedabad in Reference (IT) No.650 of 1984 whereby the petitioner is ordered to pay full wages to the respondent for the period beyond the first two months of his suspension with all consequential benefits.

2. The respondent was working in the Octroi Department of the petitioner Corporation and pursuant to certain charges against him, he was suspended on 28.11.1977. The departmental inquiry pursuant to the charges levelled against the respondent was inordinately delayed. In the meantime and during the suspension, the respondent had given an undertaking dated 20.7.1978 to the effect that he would not claim any amount for the period of suspension if he were allowed to resume his duties. It is the case of the petitioner that on the basis of such undertaking, the Corporation had issued an order dated 25.7.1978 allowing the respondent to resume his duties.

3. The learned counsel for the petitioner has vehemently argued that after filing of the undertaking and obtaining an order thereon for resuming duties, it was unfair on the part of the respondent to raise an industrial dispute and that the grant of full wages for the period of suspension by the impugned order was illegal and unjustified.

4. The Industrial Tribunal has found that there was inordinate delay on the part of the petitioner in the matter of concluding the inquiry and there was an earlier award containing a direction that the inquiry should have been completed within two months. It is also found that the petitioner had failed to show any good reason for the inordinate delay in completing the departmental inquiry. Therefore, it was concluded that the workman concerned should be paid full wages beyond the period of first two months of the suspension order.

5. The impugned award as above is made by the Industrial Tribunal in terms of the dispute which was referred to it. The Tribunal has not taken into account any material or document which are irrelevant or not germane for consideration of the issues arising from the dispute. When a matter is referred to the Tribunal in the form of an industrial dispute, the Tribunal is not bound by the terms of contract or agreement entered among the parties but, in fact, it has the power to forge new conditions and grant appropriate relief to ensure just and equitable resolution of the dispute. Therefore, the impugned award cannot be set aside only on the ground that the respondent himself had agreed to waive the wages during the period of his suspension. In this view of the matter, there is no reason to interfere with the impugned award in exercise of the powers under Article 227 of the Constitution. Hence, the petition is required to be

dismissed. By virtue of an earlier order dated 23.11.1992 in this matter, ad-interim relief granted earlier was ordered to continue on the condition that in case the petitioner was required to pay any amount to the respondent, the same should be paid with 15% interest from 1.10.1990 till such amount was actually paid. Accordingly, the petition is dismissed and the petitioner is directed to pay to the respondent the amount due to him under the impugned award with 15% interest per annum from 1.10.1990 till the amount is actually paid. With this order, Rule is discharged with no order as to costs.

(KMG Thilake) Sd/-

$$$$$